IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17394 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD - Petitioner(s)

Versus

J J SOLANKI - Respondent(s)

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Appearance :

NOTICE NOT RECD BACK for Petitioner(s) : 1,MR DIPAK R DAVE for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MS ASHA H GUPTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 13/02/2006

ORAL JUDGMENT

1. Heard learned Advocate, Mr.Dipak R. Dave, appearing on behalf of petitioner and learned Advocate, Ms.Asha H. Gupta, appearing on behalf of respondent.

2. Learned Advocate, Mr.Dave, submitted that because of the bifurcation of the Board, new Company has come into existence as Gujarat State Electricity Corporation Ltd. Therefore, Gujarat State Electricity Corporation Ltd., Thermal Power Station, Gandhinagar be substituted in place of Gujarat Electricity Board and accordingly, the cause title may be allowed to amend. Request made by learned Advocate, Mr.Dave, is granted. Cause title of petition be amended accordingly. Learned advocate Mr. Dave is now appearing on behalf of Gujarat State Electricity Corporation Ltd.

3. Petitioner has challenged award passed by Industrial Tribunal, Ahmedabad in Reference (IT) No.445 of 1992 dated 23rd September,2002, wherein, Industrial Tribunal, Ahmedabad has granted benefit to the respondent – workman in the post of Welder w.e.f. 1st April,1983 to 21st September,1990 and all consequential benefits with retrospective effect with cost of Rs.250/-.

4. Learned Advocate, Mr.Dave, appearing for petitioner - Corporation submitted that at page-6, petitioner Corporation has produced establishment Circular No.446

dated 14th February,1985. Mr.Dave submitted that at the relevant time, if the respondent - workman was working as a Welder being NMR employee and satisfied the conditions for regular employment as above, then only, entitled the post of Welder as a regular recruitment. He submitted that the respondent – workman is not qualified as per the Recruitment Rules for post of Welder and, therefore, respondent – workman is not entitled to the benefit of establishment Circular No.446 of petitioner Corporation. Learned Advocate, Mr.Dave, also raised contention that initial appointment was in the post of Helper as NMR and not in the post of Welder. He also emphasized that the order which was placed by petitioner - Corporation is for the appointment in the post of Helper which was accepted by the respondent and not objected by the respondent workman at the relevant time. Therefore, award passed by Tribunal is bad. Except that, no other submission was made by learned Advocate, Mr.Dave, on behalf of the petitioner – Corporation.

5.Learned Advocate, Ms.Gupta, appearing on behalf of respondent – workman has submitted that according to establishment Circular No.446 dated 14th February,1985, at the relevant time, the respondent – workman was

working as a Welder and his nature of work was Welder as NMR employee. This factual aspect has been admitted by petitioner – Corporation by way of issuing certificate in favour of respondent-workman, which certificate has not been denied by petitioner – Corporation before the Industrial Tribunal. Therefore, according to her submission, Tribunal has rightly granted the benefit to the respondent – workman as per establishment Circular No.446 dated 14th February,1985. She also submitted that before the Tribunal, petitioner – Corporation has not raised any other contention except that workman was working at the relevant time in the post of Helper and not in the post of Welder. She submitted that the contention that respondent – workman is not satisfying the Recruitment Rules for the post of Welder, was not raised before the Tribunal by petitioner - Corporation. She submitted that Industrial Tribunal has considered the fact in para.5 that respondent – workman had worked for more than 960 days as a Nominal Muster Roll in the post of Welder and his nature of work was also Welder and as per Exh.44 certificate which was issued by Additional Chief Engineer Mr.Vaghmare in favour of respondent workman, wherein, it was specifically made clear that

workman was working from the beginning as a Welder and he was working satisfactorily. This fact has not been disputed by petitioner - Corporation before the Industrial Tribunal and, therefore, Industrial Tribunal has come to conclusion that respondent - workman is entitled the benefit of establishment Circular No.446 dated 14th February,1985. In respect to the other contention that workman has not raised any objection at the time when he was appointed in the post of Helper, has been considered by the Tribunal at Page-25 that workman has raised objection continuously with petitioner - Corporation about the posting in the post of Helper. Exh.47 it is one of the example, wherein, workman has raised objection against his posting. Therefore, the Tribunal has taken care to consider this contention and there is objection raised by the workman at the relevant time when he was appointed in the post of Helper. Therefore, considering this factual aspect, an objection raised at the relevant time by the workman vide 47 and also in the year 1988, contention of accepting the order of Helper by the workman cannot be considered to be correct. The fact is that workman was appointed in the post of Helper knowing fully well by petitioner Corporation that he is discharging the

duties as a Welder and his nature of work in Welder Category and even though petitioner Corporation has not granted the benefit of establishment Circular No.446 dated 14th February,1985, which has been rightly granted by the Tribunal with retrospective effect after considering the Certificate Exh.44. The contention raised by Mr. Dave before this Court that respondent is not qualified for the post of Welder, was not raised by petitioner before Tribunal. Therefore, petitioner cannot be permitted to raise such contention for the first time before this Court. The Establishment Circular No. 446 granting benefit in favour of such NMR employee who at the relevant time was discharging duties of post in which such NMR employee is deemed to have been appointed or absorbed in such post loking to nature of work discharged by such NMR. In facts of this case, at the relevant time, nature of work of respondent workman was in welder category was proved by Certificate Exh.44 which was not disputed by petitioner. Therefore, now petitioner cannot be permitted to raise contention which has not been raised by it before the Tribunal in view of facts which are undisputed. For that, according to my opinion, the Tribunal has not committed any error which require any

interference by this Court while exercising power under Article 227 of the Constitution of India. In view of these facts, there is no substance in present petition. Present petition is dismissed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

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